

03-12639

United States Court of Appeals For the First Circuit

No. 05-1260

IN RE: ROBERT L. PINGARO,
Debtor.

AMERIQUEST MORTGAGE COMPANY,
Plaintiff, Appellee.

V.

ROBERT L. PINGARO,
Defendant, Appellant.

ORDER OF COURT

Entered: March 9, 2005

This case is before us on Appellant Robert L. Pingaro's Emergency Motion to Stay foreclosure of his home. In order to receive the relief he seeks, Appellant must show: (1) a strong likelihood of success on the merits; (2) that he will suffer irreparable harm absent injunctive relief; (3) that issuance of the stay will injure other parties; and (4) that the public interest lies in his favor. Acevedo- Garcia v. Vera-Monroig, 296 F.3d 13, 16 n.3 (1st Cir. 2002). At this juncture, Appellant has failed to meet this burden.

Upon review of the record, it appears that Appellant's notice of appeal, filed on February 18, 2005 from the district court's October 12, 2004 Order, was untimely filed. See Fed. R. App. P. 4(a) (notice of appeal in civil case must be filed within thirty days of judgment or order being appealed). Additionally, it is questionable whether this Court is the proper forum for at least some of Appellant's claims, namely those centering on bankruptcy court orders. Because at this time it appears that this Court lacks jurisdiction, we find that Appellant has not shown a likelihood of success on the merits

and has, therefore, not shouldered his burden.

Accordingly, Appellant's emergency motion to stay foreclosure is denied without prejudice. Appellant is directed to either move for voluntary dismissal under Fed. R. App. P. 42(b) or show cause, in writing, why this appeal should not be dismissed for lack of jurisdiction. The failure to take either action by **March 18, 2005** may lead to dismissal of the appeal for lack of diligent prosecution. Loc. R. 3(b).

By the Court:

Richard Cushing Donovan, Clerk.

By: MARGAPET CARTER
Chief Deputy Clerk.

CERTIFIED COPY
I HEREBY CERTIFY THIS DOCUMENT
IS A TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY

FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By M. Puschel Date 3/9/05

[certified copy: Judge J. Tauro, William Ruane, Acting Clerk]

[cc: Robert L. Pingaro, Steven A. Ablitt, Esq.]